

1 SENATE BILL 438

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Phil A. Griego

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10 AN ACT

11 RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR
12 OR DRUGS; REQUIRING AN ELECTRONIC SOBRIETY MONITORING DEVICE
13 FOR A CONVICTED OFFENDER WHO DOES NOT OWN A MOTOR VEHICLE AND
14 IS UNABLE TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953,
18 Chapter 139, Section 54, as amended by Laws 2005, Chapter 241,
19 Section 5 and by Laws 2005, Chapter 269, Section 5) is amended
20 to read:

21 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
22 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
23 OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

24 A. It is unlawful for a person who is under the
25 influence of intoxicating liquor to drive a vehicle within this

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1 state.

2 B. It is unlawful for a person who is under the
3 influence of any drug to a degree that renders [~~him~~] the person
4 incapable of safely driving a vehicle to drive a vehicle within
5 this state.

6 C. It is unlawful for:

7 (1) a person who has an alcohol concentration
8 of eight one hundredths or more in [~~his~~] the person's blood or
9 breath to drive a vehicle within this state; or

10 (2) a person who has an alcohol concentration
11 of four one hundredths or more in [~~his~~] the person's blood or
12 breath to drive a commercial motor vehicle within this state.

13 D. Aggravated driving while under the influence of
14 intoxicating liquor or drugs consists of a person who:

15 (1) has an alcohol concentration of sixteen
16 one hundredths or more in [~~his~~] the person's blood or breath
17 while driving a vehicle within this state;

18 (2) has caused bodily injury to a human being
19 as a result of the unlawful operation of a motor vehicle while
20 driving under the influence of intoxicating liquor or drugs; or

21 (3) refused to submit to chemical testing, as
22 provided for in the Implied Consent Act, and in the judgment of
23 the court, based upon evidence of intoxication presented to the
24 court, was under the influence of intoxicating liquor or drugs.

25 E. A person under first conviction pursuant to this

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1 section shall be punished, notwithstanding the provisions of
2 Section 31-18-13 NMSA 1978, by imprisonment for not more than
3 ninety days or by a fine of not more than five hundred dollars
4 (\$500), or both; provided that if the sentence is suspended in
5 whole or in part or deferred, the period of probation may
6 extend beyond ninety days but shall not exceed one year. Upon
7 a first conviction pursuant to this section, an offender shall
8 be sentenced to not less than twenty-four hours and not more
9 than forty-eight hours of community service. In addition, the
10 offender may be required to pay a fine of three hundred dollars
11 (\$300). The offender shall be ordered by the court to
12 participate in and complete a screening program described in
13 Subsection K of this section and to attend a driver
14 rehabilitation program for alcohol or drugs, also known as a
15 "DWI school", approved by the bureau and also may be required
16 to participate in other rehabilitative services as the court
17 shall determine to be necessary. In addition to those
18 penalties, when an offender commits aggravated driving while
19 under the influence of intoxicating liquor or drugs, the
20 offender shall be sentenced to not less than forty-eight
21 consecutive hours in jail. If an offender fails to complete,
22 within a time specified by the court, any community service,
23 screening program, treatment program or DWI school ordered by
24 the court or fails to comply with any other condition of
25 probation, the offender shall be sentenced to not less than an

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1 additional forty-eight consecutive hours in jail. Any jail
2 sentence imposed pursuant to this subsection for failure to
3 complete, within a time specified by the court, any community
4 service, screening program, treatment program or DWI school
5 ordered by the court or for aggravated driving while under the
6 influence of intoxicating liquor or drugs shall not be
7 suspended, deferred or taken under advisement. On a first
8 conviction pursuant to this section, any time spent in jail for
9 the offense prior to the conviction for that offense shall be
10 credited to any term of imprisonment fixed by the court. A
11 deferred sentence pursuant to this subsection shall be
12 considered a first conviction for the purpose of determining
13 subsequent convictions.

14 F. A second or third conviction pursuant to this
15 section shall be punished, notwithstanding the provisions of
16 Section 31-18-13 NMSA 1978, by imprisonment for not more than
17 three hundred sixty-four days or by a fine of not more than one
18 thousand dollars (\$1,000), or both; provided that if the
19 sentence is suspended in whole or in part, the period of
20 probation may extend beyond one year but shall not exceed five
21 years. Notwithstanding any provision of law to the contrary
22 for suspension or deferment of execution of a sentence:

23 (1) upon a second conviction, an offender
24 shall be sentenced to a jail term of not less than ninety-six
25 consecutive hours, forty-eight hours of community service and a

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1 fine of five hundred dollars (\$500). In addition to those
2 penalties, when an offender commits aggravated driving while
3 under the influence of intoxicating liquor or drugs, the
4 offender shall be sentenced to a jail term of not less than
5 ninety-six consecutive hours. If an offender fails to
6 complete, within a time specified by the court, any community
7 service, screening program or treatment program ordered by the
8 court, the offender shall be sentenced to not less than an
9 additional seven consecutive days in jail. A penalty imposed
10 pursuant to this paragraph shall not be suspended or deferred
11 or taken under advisement; and

12 (2) upon a third conviction, an offender shall
13 be sentenced to a jail term of not less than thirty consecutive
14 days, ninety-six hours of community service and a fine of seven
15 hundred fifty dollars (\$750). In addition to those penalties,
16 when an offender commits aggravated driving while under the
17 influence of intoxicating liquor or drugs, the offender shall
18 be sentenced to a jail term of not less than sixty consecutive
19 days. If an offender fails to complete, within a time
20 specified by the court, any community service, screening
21 program or treatment program ordered by the court, the offender
22 shall be sentenced to not less than an additional sixty
23 consecutive days in jail. A penalty imposed pursuant to this
24 paragraph shall not be suspended or deferred or taken under
25 advisement.

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1 G. Upon a fourth conviction pursuant to this
2 section, an offender is guilty of a fourth degree felony and,
3 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
4 shall be sentenced to a term of imprisonment of eighteen
5 months, six months of which shall not be suspended, deferred or
6 taken under advisement.

7 H. Upon a fifth conviction pursuant to this
8 section, an offender is guilty of a fourth degree felony and,
9 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
10 shall be sentenced to a term of imprisonment of two years, one
11 year of which shall not be suspended, deferred or taken under
12 advisement.

13 I. Upon a sixth conviction pursuant to this
14 section, an offender is guilty of a third degree felony and,
15 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
16 shall be sentenced to a term of imprisonment of thirty months,
17 eighteen months of which shall not be suspended, deferred or
18 taken under advisement.

19 J. Upon a seventh or subsequent conviction pursuant
20 to this section, an offender is guilty of a third degree felony
21 and, notwithstanding the provisions of Section 31-18-15 NMSA
22 1978, shall be sentenced to a term of imprisonment of three
23 years, two years of which shall not be suspended, deferred or
24 taken under advisement.

25 K. Upon any conviction pursuant to this section, an

1 offender shall be required to participate in and complete,
2 within a time specified by the court, an alcohol or drug abuse
3 screening program approved by the department of finance and
4 administration and, if necessary, a treatment program approved
5 by the court. The requirement imposed pursuant to this
6 subsection shall not be suspended, deferred or taken under
7 advisement.

8 L. Upon a second or third conviction pursuant to
9 this section, an offender shall be required to participate in
10 and complete, within a time specified by the court:

11 (1) not less than a twenty-eight-day
12 inpatient, residential or in-custody substance abuse treatment
13 program approved by the court;

14 (2) not less than a ninety-day outpatient
15 treatment program approved by the court;

16 (3) a drug court program approved by the
17 court; or

18 (4) any other substance abuse treatment
19 program approved by the court.

20 The requirement imposed pursuant to this subsection shall
21 not be suspended, deferred or taken under advisement.

22 M. Upon a felony conviction pursuant to this
23 section, the corrections department shall provide substance
24 abuse counseling and treatment to the offender in its custody.
25 While the offender is on probation or parole under its

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1 supervision, the corrections department shall also provide
2 substance abuse counseling and treatment to the offender or
3 shall require the offender to obtain substance abuse counseling
4 and treatment.

5 N. Upon a conviction pursuant to this section, an
6 offender shall be required to obtain an ignition interlock
7 license and have an ignition interlock device installed and
8 operating on all motor vehicles driven by the offender,
9 pursuant to rules adopted by the bureau. Unless determined by
10 the sentencing court to be indigent, the offender shall pay all
11 costs associated with having an ignition interlock device
12 installed on the appropriate motor vehicles. The offender
13 shall operate only those vehicles equipped with ignition
14 interlock devices for:

15 (1) a period of one year, for a first
16 offender;

17 (2) a period of two years, for a second
18 conviction pursuant to this section;

19 (3) a period of three years, for a third
20 conviction pursuant to this section; or

21 (4) the remainder of the offender's life, for
22 a fourth or subsequent conviction pursuant to this section.

23 O. Five years from the date of conviction and every
24 five years thereafter, a fourth or subsequent offender may
25 apply to a district court for removal of the ignition interlock

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1 device requirement provided in this section and for restoration
2 of a driver's license. A district court may, for good cause
3 shown, remove the ignition interlock device requirement and
4 order restoration of the license; provided that the offender
5 has not been subsequently convicted of driving a motor vehicle
6 while under the influence of intoxicating liquor or drugs.
7 Good cause may include an alcohol screening and proof from the
8 interlock vendor that the person has not had violations of the
9 interlock device.

10 P. If an offender states under oath that the
11 offender does not own a motor vehicle or have access to a motor
12 vehicle, the court shall order the offender to obtain and use,
13 on a frequency specified by the court and for the period of
14 time provided in Subsections N and O of this section, an
15 electronic sobriety monitoring device available in the
16 jurisdiction and approved by the court.

17 [P-] Q. In the case of a first, second or third
18 offense under this section, the magistrate court has concurrent
19 jurisdiction with district courts to try the offender.

20 [Q-] R. A conviction pursuant to a municipal or
21 county ordinance in New Mexico or a law of any other
22 jurisdiction, territory or possession of the United States or
23 of a tribe, when that ordinance or law is equivalent to New
24 Mexico law for driving while under the influence of
25 intoxicating liquor or drugs, and prescribes penalties for

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1 driving while under the influence of intoxicating liquor or
2 drugs, shall be deemed to be a conviction pursuant to this
3 section for purposes of determining whether a conviction is a
4 second or subsequent conviction.

5 [R-] S. In addition to any other fine or fee that
6 may be imposed pursuant to the conviction or other disposition
7 of the offense under this section, the court may order the
8 offender to pay the costs of any court-ordered screening and
9 treatment programs.

10 [S-] T. With respect to this section and
11 notwithstanding any provision of law to the contrary, if an
12 offender's sentence was suspended or deferred in whole or in
13 part and the offender violates any condition of probation, the
14 court may impose any sentence that the court could have
15 originally imposed and credit shall not be given for time
16 served by the offender on probation.

17 [F-] U. As used in this section:

18 (1) "bodily injury" means an injury to a
19 person that is not likely to cause death or great bodily harm
20 to the person, but does cause painful temporary disfigurement
21 or temporary loss or impairment of the functions of any member
22 or organ of the person's body;

23 (2) "commercial motor vehicle" means a motor
24 vehicle or combination of motor vehicles used in commerce to
25 transport passengers or property if the motor vehicle:

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1 (a) has a gross combination weight
2 rating of more than twenty-six thousand pounds inclusive of a
3 towed unit with a gross vehicle weight rating of more than ten
4 thousand pounds;

5 (b) has a gross vehicle weight rating of
6 more than twenty-six thousand pounds;

7 (c) is designed to transport sixteen or
8 more passengers, including the driver; or

9 (d) is of any size and is used in the
10 transportation of hazardous materials, which requires the motor
11 vehicle to be placarded under applicable law; and

12 (3) "conviction" means an adjudication of
13 guilt and does not include imposition of a sentence."

14 Section 2. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2007.